

1 DAVID I. DALBY (SBN: 114850)  
2 ddalby@hinshawlaw.com  
3 HINSHAW & CULBERTSON LLP  
4 One California Street, 18th Floor  
5 San Francisco, CA 94111  
6 Telephone: 415-362-6000  
7 Facsimile: 415-834-9070

8  
9 Attorneys for Defendants  
10 USA Cycling, Inc. and Linda Buffetti

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CORNEALIUS LOPES, ) Case No.: C 07-6213 PJH  
vs. )  
Plaintiff, ) DEFENDANTS USA CYCLING, INC.'S  
FREEMONT FREEWHEELER, ET AL., ) AND LINDA BUFFETTI'S REQUEST FOR  
Defendants. ) JUDICIAL NOTICE IN SUPPORT OF  
 ) MOTION TO DISMISS PURSUANT TO  
 ) FRCP 12(b)(5)(6)  
 )  
 ) Date: June 25, 2008  
 ) Time: 9:00 a.m.  
 ) Courtroom: 3  
 ) Hon. Phyllis J. Hamilton  
 )  
Complaint Filed: November 2, 2007

PLEASE TAKE NOTICE that pursuant to Federal Rules of Evidence, Rule 201, defendants USA Cycling, Inc. and Linda Buffetti hereby respectfully request that in considering the concurrently-filed motion to dismiss pursuant to Federal Rules of Civil Procedure, Rules 12(b)(5) and 12(b)(6), the Court take judicial notice of the following documents:

(1) Warrant filed on July 15, 2004 entitled *People of the State of California v. Neal Lopes*, Alameda County Superior Court, Case No. 209109-1. (Exhibit A).

(2) Clerk's docket and minutes of October 12, 2005 where the court granted dismissal of the charges in *People v. Lopes*, Alameda Superior Court, Case No. 209109-1. (Exhibit B).

(3) Memorandum and Order dated June 25, 2007 in an action entitled *Cornelius Lopes v. Joseph Dale Warren, et al.* United States District Court, Northern District of California, Case No. C-06-03705 CRB. (Exhibit C).

(4) The Articles of Incorporation of USA Cycling, Inc. (Exhibit D). Also available at USA Cycling Inc.'s website: [www.usacycling.org](http://www.usacycling.org)

(5) Plaintiff's original complaint filed in the Alameda County Superior Court on November 2, 2007. (Exhibit E).

Under Rule 201, a district court may take judicial notice of facts that are "not subject to reasonable dispute" because they are "either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." Fed. Rule Evid. 201.

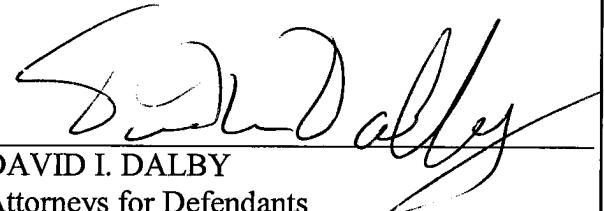
When ruling on a motion to dismiss, a district court may properly consider documents referred to in a complaint though not attached thereto, so long as neither party questions the authenticity of these documents. *In re Silicon Graphics Securities Litigation* (9th Cir. 1999) 183 F.3d 970, 986; *Parrino v. FHP, Inc.* (9th Cir. 1998) 146 F.3d 699, 706; *Pollstar .v Gigmania Ltd.*, (E.D. Cal. 2000) 170 F.Supp 2d 974, 978 (taking judicial notice of website printout when ruling on a motion to dismiss). If anything can be gleaned from plaintiff's first amended complaint it is the fact that this action relates to the earlier criminal prosecution of plaintiff by Alameda County authorities that terminated approximately "seventeen months" after plaintiff's collision with some bicyclists on June 12, 2004.

111

1 For the foregoing reasons, defendants USA Cycling, Inc. and Linda Buffetti respectfully  
2 request that the Court take judicial notice of Exhibits A – E attached hereto.

3 DATED: May 12, 2008

HINSHAW & CULBERTSON LLP

4  
5  
6 By:   
7 DAVID I. DALBY  
8 Attorneys for Defendants  
9 USA Cycling, Inc. and Linda Buffetti

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

# EXHIBIT A

Dept. No.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,  
FREMONT HALL OF JUSTICEFILED  
ALAMEDA COUNTY

PEOPLE OF THE STATE OF CALIFORNIA

NO. 209109-1

JUL 16 2004

COMPLAINT

CLERK OF THE SUPERIOR COURT  
By 30000

Deputy

v.

NEAL LOPES

PFN: DPH278 CEN: 4267588

Defendant(s).

## WARRANT

The Undersigned, being sworn says, on Information and belief, that NEAL LOPES did, in the County of Alameda, State of California, on or about June 12, 2004, commit a Misdemeanor, to wit: BATTERY, a violation of section 242 of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully use force and violence upon the person of LLOYD RATH.

## SECOND COUNT

The Undersigned further deposes and says on Information and belief, that said NEAL LOPES did, in the County of Alameda, State of California, on or about June 12, 2004, commit a Misdemeanor, to wit: BATTERY, a violation of section 242 of the PENAL CODE of California, in that said defendant(s) did willfully and unlawfully use force and violence upon the person of BOB PARKER.

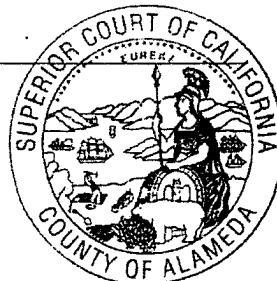
Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,  
Thursday, July 15, 2004

LISA M. FARIA  
Deputy District Attorney  
State Bar #85555 dm  
Alameda County, California

*Scot* SC#9  
s/ Newark PD-04-3845



# EXHIBIT B

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

## CLERKS DOCKET AND MINUTES

DOCKET NAME: LOPES, NEAL DEPT.: 607 CRT. DATE/TIME: 10/12/05 10:00  
 EVENT NAME: SET RPT. NO.: NF004-3845 DOCK NO.: 209109  
 I. PROC. COUNTS CEN. 4267568 PFN. ABA413 DATE: 08/09/04 4/20/05  
 1. CHARGES 1) M242 PC 2) M242 PC S-DATE: AAG-NPD ADLTY FR

STAT OR BAIL TOTAL DAYS IN CUSTODY: 1

I. BAIL	STAT.	BOND DT.	BOND CO.	DOB
BAIL	STAT.	BOND DT.	BOND CO.	DOB
I. FINE/REST.	DATE PAID	REC. NO.	TIME WAIVED	BAC

## PROCEEDING

DOC#:

JUDGE: KELLER 09/11/05  
 I. DEP. CLERK: LEE/SILVA  
 I. REPORTER: CRUZ/HOYT/KEEFER/MAGALEI/RODRE  
 DEP. D.A.: CARNERS  
 DEF. ATTY.:  
 OTHERS: *Msic*

 Not Present

Defendant:  Present  Not Present  Excused  In Custody  Pro Per  
 Interpreter \_\_\_\_\_ is present. Language spoken: \_\_\_\_\_  
 Defendant duly arraigned/advised as to constitutional rights  Defendant waives arraignment  Waiver of Rights filed  
 Defendant served:  Complaint  Discovery  Petition  Motion  Protective Order (PC 136.2)  
 Referred to Public Defender  Public Defender files conflict  Financially ineligible  Private counsel appointed  
 Plea Withdrawn  Change of Plea  Plea to count(s) \_\_\_\_\_  Not Guilty  Guilty  No Contest/Found Guilty  
 Stipulates to: lesser included / reasonably related offense of count(s) \_\_\_\_\_ to charge(s) \_\_\_\_\_  
 Time waived for:  Preliminary Examination \_\_\_\_\_ days  Trial  Sentence  Time not waived  Time waiver withdrawn  
 Clauses:  Stricken \_\_\_\_\_  Admitted \_\_\_\_\_  Sentencing Purposes Only  
 Priors:  Stricken \_\_\_\_\_  Admitted \_\_\_\_\_  Denied  
 Probation:  Conditional Sentence:  Granted for \_\_\_\_\_ years/months  See attached conditions  
 Revoked  Restored  Modified  Extended to \_\_\_\_\_  Continue on same terms and conditions  Terminated  
 Defendant admits probation violation  Previous order revoking probation vacated, set aside, defendant restored to probation  
 Submit to search and seizure of person, residence, vehicle or any property under defendant's control \_\_\_\_\_  
 No contact with / not to annoy \_\_\_\_\_ directly or indirectly: stay at least \_\_\_\_\_ away  
 Additional order(s): *Plea Motion to dismiss*  Granted  Denied  Withdrawn  
 Petition/Motion \_\_\_\_\_  Referred to:  Probation Dept.  Financial Hearing Officer  \_\_\_\_\_  
 Bail Forfeited  Bail Forfeiture Set Aside  Bail Reinstated  Bail Exonerated  Summary Judgment Entered  
 Bench Warrant:  Issued  Withheld  Withdrawn  Bail Set at \$ \_\_\_\_\_  No Cite Release  Night Service

*Blaine's minutes - all exhibits are withdrawn + returned to  
 P.O. terminated - info scanned 10/19/05 except counts  
 exhibits AA, BB + CC  
 are retained in  
 file*

Cont. Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept. \_\_\_\_\_ Time: \_\_\_\_\_ Dept. \_\_\_\_\_ Proc.: \_\_\_\_\_

CORPUS Codes: \_\_\_\_\_



DOCKET NAME: \_\_\_\_\_ CT. DATE: \_\_\_\_\_ DOCK NO. \_\_\_\_\_

# EXHIBIT C

1  
2  
3  
4  
5  
6  
7

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

8

9 CORNELIUS LOPES,

10 No. C 06-03705 CRB

11 Plaintiff,

12 **MEMORANDUM AND ORDER**

13 v.

14 JOSEPH DALE WREN, et al.,

15 Defendants.

---

16  
17 While jogging one morning in June 2004, plaintiff collided with a bicyclist  
18 participating in a bicycle race in Newark, California. A few weeks later plaintiff was  
19 arrested for intentionally causing the accident, although he was never convicted of the  
20 charges. In this section 1983 action, plaintiff, proceeding pro se, challenges his arrest. The  
21 Court has previously dismissed plaintiff's claims against the District Attorney defendants.  
22 Now pending before the Court is the motion for summary judgment of the police officer and  
23 City defendants: Officer Joseph Daly Wren, Officer Badge 56, City of Newark and Newark  
24 Police Department. After carefully considering the papers and evidence filed by the parties,  
25 and having had the benefit of oral argument, defendants' motion for summary judgment is  
26 GRANTED.

27 //  
28 //

**FACTUAL BACKGROUND**

At approximately 8:20 a.m. on June 12, 2004, Newark Police Officers Joseph Wren (“Officer Wren”) and Farley were dispatched to investigate an accident involving a pedestrian and a bicyclist at the Eureka Circle Course in Newark, California. When Officer Wren arrived at the scene, he noticed that the roadway had been closed for a bicycle race. Officer Wren noticed that plaintiff Cornelius Lopes, with a mangled face, was sitting on the curb. Lopes told Officer Wren that he was confused about what had happened, but confirmed that he had been running in the roadway in the opposite direction of the bicycle racers. Lopes made no other statements to Officer Wren and was eventually transported by ambulance to Washington Hospital. Prior to this incident, Officer Wren had never met nor heard of plaintiff Lopes.

Officer Wren spoke to various witnesses at the scene. Byron Sheppard reported that he had been directly behind the bicyclist that collided with Lopes and that he had observed Lopes run directly into the group of bicyclists and hold his right arm out to the side, level to the ground, and strike the bicyclist in the middle of the chest. Officer Wren also spoke with bicyclist Bob Parker, the bicyclist that collided with Lopes. Parker stated that he did not see Lopes prior to the accident. Another bicyclist who was involved in the accident did not see or hear what caused the collision.

Officer Wren also spoke with Jason Sage. Sage reported that Lopes had been warned to stay off the roadway and that Sage had been told that on one occasion Lopes had responded something to the effect of “F\_\_ You Jew.”

The next day Officer Wren spoke with Lopes. Lopes denied that he had warned him to stay off the course. He also denied that he had argued with any of the bicyclists or stuck his arm out while jogging to interfere with the bicyclists. Later that day, Lopes faxed a written statement to Officer Wren.

According to Officer Farley’s police report, upon his arrival at the scene Officer Farley spoke with witness Peter Rosa. Rosa reported that Lopes had intentionally collided with the bicyclists.

1       On June 14, 2004, Officer Wren prepared a written police report that included the  
2 above information, as well as Lopes' written statement. Officer Wren concluded that the  
3 report should be sent to the Alameda County District Attorney for review and filing of "PC  
4 242" (battery) charges against Lopes. Officer Wren concluded: "Victims, Parker and Rath  
5 believe this Act was intentional on Lopes behalf. They requested that a report covering the  
6 details of this incident be sent to the DA's office."

7       The District Attorneys' Office subsequently asked the Newark Police Department to  
8 obtain further information. In connection with this further investigation, witness Jason Sage  
9 sent Officer Wren additional written witness statements and a CD. Several of the witnesses  
10 asserted in their written statements that they had told Lopes to exit the bicycle course. In  
11 addition, witness Tim O'Hara asserted that when he politely asked Lopes to leave the course,  
12 Lopes responded: "F \_\_\_ You, Jew." Officer Wren submitted both the written statements and  
13 the CD to the District Attorney's Office.

14       On July 6, 2004, the District Attorney's Office asked Officer Wren to locate the  
15 bicyclist that had collided with Lopes. Officer Wren produced a second supplemental report  
16 identifying Bob Parker as the struck bicyclist. Officer Wren's submission of the  
17 supplemental report ended his participation in the case. He never met nor spoke with any  
18 District Attorney's Office representative concerning whether to file charges against Lopes or  
19 issue an arrest warrant.

20       On July 15, 2004, Alameda County Deputy District Attorney Lisa Faria asked Newark  
21 Police Sergeant Robert Douglas to author a "Declaration in Support of Arrest and/or Issuance  
22 of Warrant of Arrest" ("Declaration") to accompany the District Attorney's criminal  
23 complaint for an arrest warrant against Lopes. Prior to the request from Faria, Sergeant  
24 Douglas had never met nor spoken with a representative of the District Attorney's Office  
25 concerning whether to file charges against Lopes. Sergeant Douglas read the criminal  
26 complaint and Officer Wren's police report with supplements and concurred that probable  
27 cause existed to arrest Lopes. Accordingly, he prepared and signed the Declaration. Once he  
28 submitted the Declaration, his involvement with Lopes' case ended.

1 On July 16, 2004, a criminal complaint and arrest warrant were issued charging Lopes  
2 with misdemeanor battery arising from the June 12, 2004 collision. Lopes was not convicted  
3 of the charges.

## PROCEDURAL HISTORY

5 Lopes, proceeding pro se, subsequently filed this section 1983 action against certain  
6 Alameda County District Attorney's Office defendants, as well as Officer Wren, the City of  
7 Newark, the Newark Police Department and the Newark Police Union. Upon the filing of a  
8 motion to dismiss, the Court dismissed the claims against the District Attorney defendants on  
9 the ground of absolute prosecutorial immunity and failure to state a claim.

10 The remaining served defendants have now moved for summary judgment. As  
11 plaintiff is proceeding without the benefit of a lawyer it is difficult to discern the exact nature  
12 of his claims. In his "Amended Motion for Plaintiffs' Memorandum of Points and  
13 Authorities In Support of Motion for Summary Judgment" filed June 8, 2007, which the  
14 Court considers as an opposition to defendants' motion, plaintiff identifies several "claims."

15 In “Claim 1” Lopes appears to contend that Officer Wren’s inclusion of the “F \_\_\_  
16 You, Jew” statement his police report violates the Establishment Clause. Plaintiff’s June 8,  
17 2007 Memorandum (“Plaintiff’s Memorandum”) at p. 1. “Claim 2” contends that Wren  
18 conspired with others to obtain plaintiff’s arrest warrant without probable cause. Id. at 8. In  
19 “Claim 3” Lopes alleges that Officer “Wren recklessly published false information of a crime  
20 and put it into judicial records with disregard for its truth and falsity that the plaintiff had  
21 struck a cyclist.” Id. at 12. Plaintiff’s opposition identifies his claim 4 as “Count 4.” Count  
22 4 contends that his due process rights were violated because the CD Officer Wren received  
23 included photographs that showed that plaintiff had not committed battery. In Count 5 he  
24 contends that Officer Badge #56 “negligently prepared and signed his signature to the  
25 Declaration in Support of Arrest.” Id. at 20. Plaintiff must be referring to Sergeant Douglas  
26 who signed the Declaration, although Sergeant Douglas does not carry Badge #56. Claim 7  
27 and claim 10 allege that the Newark Police Department and the City of Newark negligently  
28 trained Officer Wren and Sergeant Douglas (erroneously referred to as Badge #56). Claims 8

1 and 9 are omitted from the opposition; these may be the dismissed claims against the  
2 prosecutors.

3 **SUMMARY JUDGMENT STANDARD**

4 A principal purpose of the summary judgment procedure is to isolate and dispose of  
5 factually unsupported claims. Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986). A  
6 party moving for summary judgment that does not have the ultimate burden of persuasion at  
7 trial (usually the defendant) has the initial burden of producing evidence negating an  
8 essential element of the non-moving party's claims *or* showing that the non-moving party  
9 does not have enough evidence of an essential element to carry its ultimate burden of  
10 persuasion at trial. Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th  
11 Cir. 2000).

12 If the moving party does not satisfy its initial burden, the non-moving party has no  
13 obligation to produce anything and summary judgment must be denied. If, on the other hand,  
14 the moving party has satisfied its initial burden of production, then the non-moving party  
15 may not rest upon mere allegations or denials of the adverse party's evidence, but instead  
16 must produce admissible evidence that shows there is a genuine issue of material fact for  
17 trial. Nissan Fire & Marine Ins. Co., 210 F.3d at 1102. A genuine issue of fact is one that  
18 could reasonably be resolved in favor of either party. A dispute is "material" only if it could  
19 affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477  
20 U.S. 242, 248-49 (1986).

21 At the case management conference held on January 12, 2007, the Court gave plaintiff  
22 a copy of the pro se litigant's summary judgment warning. The warning specifically advised  
23 plaintiff of his burden in responding to a motion for summary judgment.

24 **DISCUSSION**

25 **A. Establishment Clause Claim (Claim 1)**

26 Plaintiff's Establishment Clause claim fails as a matter of law. First, it appears to be a  
27 new claim and plaintiff has not and will not be given leave to file a Fifth Amended  
28 Complaint. Second, it fails as a factual matter as there is no dispute that Officer Wren was

1 told that plaintiff had used the contested phrase. Third, even if Lopes never uttered the  
2 challenged phrase, including the statement in Officer Wren's police report does not violate  
3 the Establishment Clause as a matter of law.

4 **B. Conspiracy to obtain warrant without probable cause (Claim 2)**  
5 **Due process (Count 4)**  
6 **Negligent preparation of declaration in support of warrant (Count 5)**

7 Claim 2, Count 4 and Count 5 all derive from plaintiff's contention that there was not  
8 probable cause to charge him with misdemeanor battery. Plaintiff's claims fail as a matter of  
9 law because it is undisputed that the District Attorney filed misdemeanor battery charges  
against plaintiff. As the Ninth Circuit has explained:

10 Ordinarily, the decision to file a criminal complaint is presumed to result from  
11 an independent determination on the part of the prosecutor, and thus, precludes  
12 liability for those who participated in the investigation or filed a report that  
13 resulted in the initiation of proceedings. However, the presumption of  
14 prosecutorial independence does not bar a subsequent § 1983 claim against  
state or local officials *who improperly exerted pressure on the prosecutor,*  
*knowingly provided misinformation to him, concealed exculpatory evidence, or*  
*otherwise engaged in wrongful or bad faith conduct that was actively*  
*instrumental in causing the initiation of legal proceedings.*

15 Awaby v. Adelanto, 368 F.3d 1062, 1067 (9th Cir. 2004) (emphasis added).

16 Plaintiff offers no evidence whatsoever that Officer Wren, Sergeant Douglas, or any  
17 member of the Newark Police Department exerted any pressure, let alone improper pressure,  
18 on the prosecutor. Nor is there any evidence from which a reasonable jury could find that  
19 Officer Wren or Sergeant Douglas knowingly provided false information to prosecutors or  
20 concealed exculpatory evidence; to the contrary, the undisputed evidence is that Officer  
21 Wren's police report accurately reflects what he was told during his investigation. In  
22 addition, the evidence is undisputed that Officer Wren provided the allegedly exculpatory  
23 CD to the District Attorney's Office. Plaintiff also offers no evidence to support his apparent  
24 contention that the police officers conspired with private parties to deprive him of his due  
25 process rights. Accordingly, defendants are entitled to judgment on the above claims.

26 //  
27 //  
28 //

1       **C. Publishing false information in the police report and judicial records (Claim 3)**

2       Plaintiff's "libel in public documents" claim, to the extent it differs from his due  
3 process claim, also fails as a matter of law. First, there is no evidence that the police officer  
4 defendants knowingly included any false information in their reports or the Declaration.

5       Second, "[i]n order to maintain a cognizable § 1983 claim based on defamation, a  
6 plaintiff must demonstrate the loss of a property or liberty interest rooted in the constitution  
7 in conjunction with injury to reputation." Crowe v. County of San Diego, 303 F.Supp.2d  
8 1050, 1111 (S.D. Cal. 2004). "As the Ninth Circuit has explained, a § 1983 claim for  
9 defamation-plus may be proved either by demonstrating that the plaintiff suffered an injury  
10 to reputation that was inflicted in connection with the violation of a federally protected right  
11 or by demonstrating that the plaintiff's injury to reputation caused the denial of a federally  
12 protected right." Id. (citation omitted). Plaintiff has identified neither, let alone produce  
13 evidence that would support a finding by a reasonable jury that he had suffered such an  
14 injury.

15       **D. Negligent training claims**

16       Since plaintiff's claims against the police officers fail, it follows that his claims  
17 against the City of Newark and the Newark Police Department for negligent training of the  
18 officers also fail. Moreover, plaintiff offers no evidence as to the training provided and does  
19 not even explain what training the officers should have received.

20       **E. Police union defendant**

21       Plaintiff also named the "Newark Police Union" as a defendant and has recently filed  
22 a motion for summary judgment. Plaintiff claims that the Union has violated the  
23 Establishment Clause. As the Union is not a government entity, the Establishment Clause  
24 does not apply as a matter of law; accordingly, the Court will dismiss the claims against the  
25 Union with prejudice.

26       //

27       //

28       //

## CONCLUSION

For the reasons stated above, defendants' motion for summary judgment on all of the claims against them is GRANTED. In addition, the claims against the Police Union are dismissed with prejudice.

## IT IS SO ORDERED.

Dated: June 25, 2007

---

CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

# United States District Court For the Northern District of California

# EXHIBIT D

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
of  
USA CYCLING, INC.  
a Colorado Non-Profit Corporation**

**ARTICLE I**

**Structure**

**Section 1.**

The name of this corporation is USA Cycling, Inc. ("Corporation").

**Section 2.**

The Corporation's registered office and principal office address is One Olympic Plaza, Colorado Springs, Colorado 80909-5775.

**Section 3.**

The Corporation shall have voting members as provided for in the Bylaws

**ARTICLE II**

**Purposes**

**Section 1.**

Notwithstanding any other purpose or provision in these Articles, the Corporation is organized and shall operate at all times exclusively for exempt purposes within the meaning of §501(c)(3) of the Internal Revenue Code of 1986, or a corresponding section of any future federal tax code ("Code").

**Section 2.**

The supreme purpose of the Corporation shall be the preservation, development, and administration of the sport of bicycle racing within the United States of America.

**Section 3.**

The Corporation, principally through the activities of its Associations, shall:

**Part 1.** Conduct, coordinate, and seek the advancement of competitive bicycle racing.

**Part 2.** Establish rules governing the conduct of bicycle races to ensure fair competition and prevent frauds.

**Part 3.** Conduct or participate in programs to assist riders in the development of their competitive skills and to ensure safe competition.

**Part 4.** Conduct National Championships and select or recommend teams to represent the United States of America in international and Olympic competition.

**Part 5.** Represent the sport of bicycle racing in the United States of America to other national, international, and Olympic sports organizations.

**Part 6.** Act as the repository for all certified and approved records pertaining to the sport.

**Part 7.** Seek to uphold the rights and interests of cyclists and to communicate these interests to governmental authorities and to the general public.

**Part 8.** Be organized to provide fair representation, directly or by affiliation, for all individuals and organizations that participate in the sport.

**Section 4.**

The Corporation may do everything necessary or incidental to the purposes described above which are not forbidden by the Colorado Revised Non-Profit Corporation Act as may be amended ("Act"), by any other applicable law or by these Articles.

**Section 5.**

The Corporation is irrevocably dedicated to, and operated exclusively for, charitable and non-profit purposes. No part of the assets of the Corporation shall be distributed to or inure to the benefit of any individual.

**ARTICLE III**

**Corporate Powers**

**Section 1.**

The Corporation shall have and may exercise every right, power, and privilege now or hereafter conferred upon it or pursuant to the Act and any other applicable laws.

**Section 2.**

The Corporation shall have authority to do whatever is reasonably necessary to accomplish its purpose.

**Section 3.**

The Corporation shall have no power to make a loan to any of its directors or officers.

**Section 4.**

No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under §501(c)(3) of the Code or (b) by a corporation, contributions to which are deductible under §170(c)(2) of the Code.

**Section 5.**

In the event of the dissolution of the Corporation or the winding up of its affairs, the Corporation's property shall not be conveyed to any individual or organization created or operated for profit for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed to an organization or organizations created and operated exclusively for charitable and non-profit purposes similar to those of the Corporation and consistent with the exempt purposes provided for under §501(c)(3) of the Code.

**ARTICLE IV**

**Amendments and Construction**

**Section 1.**

These Articles may be amended by the "Voting Members", as that term is defined in the Bylaws, or by the Board of Directors. Amendments to the Bylaws and other rules and regulations of the Corporation shall be made in accordance with the Bylaws. All amendments to these Articles must be approved by at least two-thirds of the total votes cast, abstentions not being counted. The text of any proposed amendment to these Articles shall be provided to the Voting Members or the Board of Directors, which ever may be applicable, no less than 30 days prior to the meeting at which the

amendment will be considered. Any amendment to these Articles shall be proposed in writing to the Secretary of the Corporation by the Board of Directors or at least 10% of the Voting Members.

**Section 2.**

In interpreting these Articles and all governing documents of the Corporation, the feminine gender shall be substituted for the masculine, the plural for the singular, and the singular for the plural where such substitution is consistent with the context.

**ARTICLE V**

**Liability**

The personal liability of the Directors of the Corporation shall be eliminated to the fullest extent permissible under Colorado and other applicable law. No Director shall be personally liable to the Corporation or its members for monetary damages for any breach of fiduciary duty as a director, except that no Director's liability to the Corporation for monetary damages shall be eliminated or limited on account of any of the following: (i) any breach of the director's duty of loyalty to the Corporation or its members; (ii) any acts or omissions of a Director not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) the Director's assent to or participation in either an unlawful distribution by the Corporation, or the making of a loan by the Corporation to one of its officers or Directors; or (iv) any transaction in which a Director received improper personal benefit. Nothing herein shall be construed to deprive any Director of the right to all defenses ordinarily available to a director nor shall anything herein be construed to deprive any Director of any right for contribution from any other Director or other person. Any repeal or modification of this Article V shall be prospective only and shall not adversely affect any right or protection of a Director existing at the time of such repeal or modification.

# EXHIBIT E

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

Fremont Freewheelers, K&K Insurance, USA Cycling, Northern California and Nevada Cycling Association (NICA)  
Robert Parker, Lawrence Upthegrove, Lloyd Ruth, Richard Brattie  
YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Concilius Lopes  
6251 Quartz Place  
Newark, CA 94560

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**  
**ALAMEDA COUNTY**

NOV 2 - 2007

CLERK OF THE SUPERIOR COURT  
By  Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol](http://www.courtinfo.ca.gov/selfhelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

Hayward Superior Court  
24405 Amador St.  
Hayward, CA 94541

CASE NUMBER:  
(Número de expediente):

17354585 -

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Concilius Lopes  
6251 Quartz Place, Newark, CA 94560

PAT S. SWEETEN

DATE: 11/2/07 Clerk by \_\_\_\_\_, Deputy \_\_\_\_\_  
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

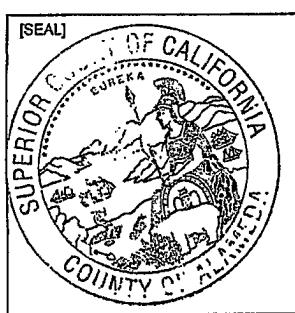
**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under:	<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
	<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
	<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
	<input type="checkbox"/> other (specify):	

4.  by personal delivery on (date):



SUM-200(A)

SHORT TITLE: Lopez v- Fremont Freewheelers	CASE NUMBER: HG 07354585
---	-----------------------------

## INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff  Defendant  Cross-Complainant  Cross-Defendant

Gary Birch, Sally Wilson, Jason Sage, Tim O'Hara, Jeff Wong, Joseph Oake-Wren, C.B. ELLISON, Byron Sheppard, Larry Noland, Steve Grasis, Larry Rosa, Fremont Freewheelers Race Team, Linda Buffetti, Joe Baughman, Peter Allen, Alameda County District Attorney, Newark Police Department, Casey Carrington

Page 2 of 2  
Page 1 of 1



1 SUPERIOR COURT OF THE STATE  
2 OF CALIFORNIA FOR THE COUNTY OF  
3 ALAMEDA COUNTY

**FILED**  
**ALAMEDA COUNTY**

NOV 2 - 2007

4 CLERK OF THE SUPERIOR COURT  
5

By  Deputy  
HGO 7354585

6 Cornelius Lopes  
7 6251 Quartz Place  
8 Newark, CA. 94560  
9 510-790-3818

CASE NUMBER:

CIVIL CLAIM

PLAINTIFF

v.

10 Fremont Freewheelers, K&K Insurance, USA Cycling, Northern California and Nevada Cycling  
11 Association (NCNCA), Robert Parker, Lawrence Upthegrove, Lloyd Rath, Richard Brockie, Gary  
12 Birch, Sally Wilson, Jason Sage, Tim O'Hara, Jeff Wong, Joseph Dale Wren, C.B. Ellison  
13 Byron Sheppard, Larry Nolan, Steve Grusis, Larry Rosa, Fremont Freewheelers Race Team,  
14 Linda Buffetti, Joe Baughman and Peter Allen, Alameda County District Attorney  
15 Newark Police Department, Casey Carrington

DEFENDANTS

16  
17 Plaintiff asks to submit a civil claim for Constitutional violations and seeks equitable relief  
18 through a jury trial. Plaintiff challenges California law and the Alameda County jury selection  
19 process.  
20  
21  
22  
23  
24  
25  
26  
27  
28

## 1 COUNT 1

2 On or between June 12 and June 22 Jason Sage a promoter with the Fremont Freewheelers  
3 held a grudge against Plaintiff and set out to get him and illegally seized Plaintiffs identity  
4 through the characterization of one who is anti-Semitic. An action for damages for private  
5 conspiracies for the purpose of depriving any person of class or persons of equal protection  
6 of the laws, 42 U.S.C. ss1985(3)

7 As a result Plaintiff was charged with two counts of battery plus a hate crime and was in the  
8 criminal justice system as a defendant for seventeen months. Plaintiff was unfairly deprived  
9 of liberty a constitutional provision and denied legal proceeding and right to a fair trial. As a  
10 result Plaintiff was diagnosed with posttraumatic stress disorder for the injuries are consequent  
11 violations of Plaintiffs fourteenth Amendment rights.

12 Where federal rights have been invaded courts will grant necessary relief upon demonstrating  
13 an injury of violations of the Fourth Amendment. Plaintiff seeks unspecified monetary damages  
14 and appropriate equitable relief.

15 42 U.S.C. ss1983 Civil Action for Depravation of rights, 42 U.S.C. ss1985 Conspiracy to  
16 interfere with Civil Rights (1)(2)(3), Defendant should be charged with ss242.

## 17 Count 2

18 Joe Baughman, Linda Buffetti, Fremont Freewheelers and FFBC Race Team conspired to  
19 conduct and participate in the affairs of an enterprise which includes any association or group  
20 of individuals who engaged in interstate commerce through the pattern of racketeering activities  
21 in violation of 18 U.S.C. ss1962 (d). The enterprise as a group of individuals associated in fact  
22 for the purpose of illegally committing fraud by utilizing email to defraud the insurance company,  
23 corruptly influencing and attempting to corruptly influence the outcome of a state court  
24 proceeding.

25 As a result this claim is based on the denial of due process rights in the outrageous behavior  
26 of the non-profit agency. The persons associated for the common purpose of receiving an income  
27 through the collection of an unlawful debt were the officers of the company. They use indirectly  
28 such income or the proceeding of such income to acquire interest to establish or operation

1 of activities that affected their commerce.

2 As a result Plaintiff was charged with two counts of battery and a hate crime, suffers from PTSD  
3 and denied due process rights. Plaintiff seeks civil remedies provided by 18 U.S.C. ss1964(a)  
4 (c), Plaintiff seeks unspecified monetary damages and equitable relief.

5

6 COUNT 3

7 Casey Carrington and Richard Brockie on June 12 through June 22, 2004 recklessly published  
8 false information the Plaintiff had committed a crime and put in on the Fremont Freewheelers  
9 Bike Club email list and solicited the District Attorney to file charges of battery and a hate crime  
10 against the Plaintiff.

11 As a result Plaintiff was charged with two counts of battery plus a hate crime for a crime he did  
12 not commit, Plaintiff was forced to disprove falsehoods in a criminal proceeding which he was  
13 in for seventeen months. Defendant should be charged with ss242 battery for he was acting  
14 "under color" of law while aiding in a criminal investigation.

15 Plaintiff was diagnosed with posttraumatic stress disorder and has had several panic attacks  
16 due to the mental stress and concern for his family's future. Plaintiff seeks monetary damages.  
17 42 U.S.C. ss1983 provides remedies and relief against action "under color" of law. Fourteenth  
18 Amendment, *Screws v. United States*, supra

19 COUNT 4

20 Sage and Brockie were involved in a conspiratorial relationship with persons with whom they  
21 conspired to commit a crime to pretext information the Bike club gathered as true and correct that  
22 the Plaintiff had committed a crime. On June 14, 2004 he and Jason Sage set into motion by  
23 pretext the arrest of the Plaintiff for a offence which there was no lawful grounds for an arrest of  
24 the Plaintiff.

25 On June 21, 2004 in an email the Defendant believed it was he and Defendant Sages job to  
26 persuade the D.A. to press charges even though they were not the injured party. In the June 20<sup>th</sup>  
27 email he admits the clubs liability to the accident but believes criminal charges are best for the  
28 Plaintiff in the June 14<sup>th</sup> email.

1 As a result plaintiff was charged with two counts of battery and a hate crime. The defendants  
2 disregard of the constitutional requirement guarantee, deprived Plaintiff of his Fourteenth  
3 Amendment rights and Due Process of law. Plaintiff seeks unspecified monetary damages  
4 and equitable relief.

5 Monroe v. Pape, 365 U.S. (1961), Esposito-Hilder v. SFX Broadcasting, 654 (1996), 42 USC 1983

6 COUNT 5

7 Defendant's Jason Sage, Sally Wilson, Jim Davis, Tim O'Hara and Gary Birch on June 12  
8 through June 22, 2004 recklessly published false information the Plaintiff had committed a  
9 crime and put it on the Fremont Freewheelers Bike club email list and solicited the District  
10 Attorney to file charges of battery and a hate crime against the Plaintiff.

11 As a result Plaintiff was charged with two counts of battery plus a hate crime he did not commit,  
12 Plaintiff was forced to disprove falsehoods in a criminal proceeding which he was in for  
13 seventeen months. Defendants should be charged with ss242 battery upon Plaintiff and their acts  
14 treated as acting "under color" of law while aiding in a criminal investigation.

15 Plaintiff was diagnosed with PSTD and spent \$70,000 on criminal attorney's fees to disprove  
16 the falsehoods of the Defendants. Plaintiff seeks unspecified monetary damages and equitable  
17 relief. Monroe v. Pape, 365 U.S. (1961), Federal Identity Theft and conspiracy charges.

18 COUNT 6

19 On June 22, 2004 Tim O'Hara negligently and willfully detained and illegally seized Plaintiff's  
20 identity through the characterization of one who is anti-Semitic. This practice is allowed as a  
21 custom through Proposition 14, a state custom to discriminate by denying to any person equal  
22 protection of the law of the Fourteenth Amendment of the Constitution.

23 As a result Plaintiff was charged with two counts of battery plus a hate crime. The Defendant  
24 introduced a typed document on June 22, 2004 stating Plaintiff said "fuck you jew" which aided  
25 the pretext done by Defendants Sage, Brockie, Wilson and Birch that on June 12, 2004 the  
26 alleged battery by Plaintiff on that day was true and correct. Fremont Freewheelers introduced  
27 this document along with others to the Newark Police Department with out the date on the  
28 document. This is on its face is a solicitation and conspiracy to commit a capital crime or a first

1 degree felony under Section 5.05 of the Model Penal Code.

2 Defendant should be charged with ss242 which extends the to rights guaranteed of the plaintiffs  
3 Fourteenth Amendment rights and Due Process rights. Plaintiff seeks unspecified monetary  
4 damages and equitable relief for suffering PTSD and disfigurement.

5 COUNT 7

6 Gary Birch, Jason Sage, Tim O'Hara, Jeff Wong and Sally Wilson were members of the  
7 organizing committee for the Fremont Freewheelers Race Team and members of the Fremont  
8 Freewheelers Bike Club. On or about June 12<sup>th</sup> through 18<sup>th</sup> 2004 conspired to conduct  
9 and participate in the affairs of an enterprise which includes any association or group of  
10 individuals who engaged in interstate commerce through a pattern of racketeering activities  
11 in violation of 18 U.S.C. ss1962 (d). The enterprise as a group of individuals associated in fact for  
12 the purpose of illegally committing fraud by utilizing email to defraud the insurance company,  
13 corruptly influencing and attempting to corruptly influence the outcome of a state court  
14 proceeding. The legal issue is this pattern of racketeering involving the enterprise as a group  
15 were to deny Plaintiff the equal protection of the law. Plaintiff suffers from PTSD and  
16 disfigurement, emotional distress.

17 Defendants should be charged with ss242 battery as well as racketeering. Plaintiff demands  
18 financial compensation and equitable relief.

19 COUNT 8

20 K&K Insurance, USA Cycling, Northern California and Nevada Cycling Association (NCNCA)  
21 Larry Upthgrove, Robert Parker, Larry Rosa, Steve Grusis, FFBC Race Team, Bryan Sheppard  
22 Casey Carrington, Larry Nolan, Peter Allen, Jim Davis, Alto Velo Race Team, Real Bicycles  
23 Cycling Race Team, Mako/Galaxy Race Team, Gary Birch, Richard Brockie, Jason Sage, Tim  
24 O'Hara, Jeff Wong, Sally Wilson work for or are non-profit organizations where injury to the  
25 Plaintiff as a result of their negligence stand equal before the law and must be bound alike.  
26 Defendants violated Plaintiff's Civil Rights under 42 U.S.C. ss1985 (1) (2) (3) for the purposes  
27 of depriving Plaintiff equal protection under the law and equal privileges and immunities under  
28 the laws, Plaintiff seeks recovery from damages from such injury and deprivation of the

1 conspirators. The prevention of officers performing their duty was their active participation  
2 in criminal charges and a Hate Crime being bought against the Plaintiff. They refer to the  
3 Plaintiff as O.J. Simpson in emails and in conversations held in a witness room in the Fremont  
4 Superior Court, prior to five or more taken the stand at Plaintiff's criminal trial. Furthermore,  
5 Defendants actively pursued the District Attorney to pursue charges against the Defendant to  
6 protect themselves from civil liability. In emails and depositions Defendants believed if they  
7 pursue the criminal charges it was to teach Plaintiff a lesson. Defendants obstructed justice by  
8 pretext, that Plaintiff had struck several people across the chest and used vulgar words against  
9 a racially protected race of people. Furthermore, for purposes of depriving, two or more persons  
10 conspired from one State to another on the Internet super highway for purposes of depriving  
11 Plaintiff, equal protection of the law.

12 Plaintiff seeks monetary relief and equitable damages. Plaintiff seeks to have the non-profit  
13 cycling clubs loose that status so no further citizen is harmed. Plaintiff seeks to have the  
14 individuals charged with ss242. 42 U.S.C. ss2000(b) –2000(c), Title VI prohibits discrimination  
15 under any program or activity that receives federal finance assistance 42 U.S.C. ss2000 (d).  
16 Defendants should be charged with assault and battery upon the Plaintiff.

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1

2

3

4 EMPTY SPACE

5

6

7

8

9

10 COUNT 9

11 On June 12, 2004 through July 15, 2004 in the City of Newark, California Defendant  
12 Joseph Wren led an incomplete investigation regarding an accident between a jogger and cyclist.  
13 Moreover, the Defendant was off work July 14<sup>th</sup> through 17<sup>th</sup> 2004, when Defendant returned to  
14 work on the 18<sup>th</sup> he completed his report stating "through his investigation" Plaintiff should be  
15 charged with a "Hate Crime" and "2 counts of battery". Defendant relied on third party  
16 information to secure a warrant without probable cause and used force to deprive Plaintiff of his  
17 due process rights.

18 As a result Plaintiff is diagnosed with chronic posttraumatic stress disorder for the injuries are  
19 consequent violations of Plaintiff's Fourth Amendment rights and was unfairly deprived of  
20 liberty a constitutional provision and denied legal proceedings and the right to a fare trial.

21 Plaintiff was arbitrarily deprived of life and liberty while "under color" of law; he interfered  
22 with or had influence upon state authorities and the conspiracy was so massive and effective  
23 thus satisfy the state action requirement of ss1985 (3). Defendant's intent deprived of equal  
24 protection and immunities with otherwise a class based or . . . invidiously discriminatory  
25 was behind the conspirators actions.

26 Plaintiff was harmed by being charged with a crime of Battery (2) counts and a Hate Crime  
27 was deprived of a legal proceeding, infringed on private rights and denied the "equal protection  
28 of the laws. Plaintiff seeks monetary damages and equitable relief.

## 1 COUNT 10

2 Defendant C.B. Richard Ellis the landlord for Stevenson Technology Park in Newark, California  
3 entered into an agreement with the Fremont Freewheelers Race Team to allow them to hold a race  
4 on their property. Under the agreement entered no pedestrian barricades were erected for the  
5 protection of pedestrians nor were the roads closed for such an event. Due to the Defendants  
6 negligence, Plaintiff suffered injuries which caused disfigurement for his face and PTSD.

7 Plaintiff brings this suit for monetary damages and equitable relief.

8

9

## 10 COUNT 11

11 Defendants Newark Police Department and Officer Joseph Wren have run afoul  
12 of the Establishment Clause by endorsing religion through the display of "Hate Crime" checked  
13 in the police report. This Court must agree with the general proposition that the context in which  
14 the Defendants a governmental entity uses religious symbols to see the relevancy in determining  
15 the answer to this claim. The Defendants should be found guilty because the use of religious  
16 symbolism is unconstitutional because it had the effect of endorsing religious beliefs and the effect  
17 of the Defendant's use of religious symbolism were within the context of the document.

18 Plaintiff is the employer of Officer Wren a municipality and trained Defendant Wren in the sphere  
19 of his official responsibilities.

20 Plaintiff was harmed by pretext to incense anyone who would read the report that it was gathered  
21 in the accordance of all Due Process rights afforded to the Plaintiff. Plaintiff went through a  
22 criminal trial with a "Hate Crime" as the direct result of such allegations.

23 Plaintiff seeks monetary damages and equitable relief. The 14th Amendment provides people  
24 to be secure in their persons and unreasonable search and seizure and shall not be violated.

## 25 COUNT 12

26 Jim Davis, Robert Parker, Jason Sage, Lloyd Rath, Sally Wilson, Tim O'Hara, Jeff Wong, Gary  
27 Birch, Richard Brockie, Larry Rosa, Joseph Dale Wren, interfered with the Plaintiff's 13<sup>th</sup> and  
28 Amendment Rights intentionally adopting certain conduct in certain circumstances known to

them, and that the conduct is forbidden by law under those circumstances, they intentionally broke the law. ss 242 is applicable to the 14<sup>th</sup> Amendment rights it is intended to deal with conspiracies “under color” of law to deprive persons of the 14<sup>th</sup> Amendment rights. Ss241 is constitutionally secure by private individuals including rights rising out of relationship with the federal government. Ss1985 (3) is applicable to private conspiracies to reach private conduct under the 13<sup>th</sup> Amendment. The conspiracy deprived the Plaintiff “of his equal protection of law and “equal privileges and immunities”. This private conspiracy whose action was “under color” of state law, influenced upon state authority and so massive it supplants those authorities. Discriminatory intent other than racial bias is actionable under ss1985.

Plaintiff was harmed because he suffers from PTSD due to private violations of depriving the Plaintiff equal protection of the law. 42 U.S.C ss1981, Every person who “under color” of any statute, ordinance, regulation, custom, or usage of any State, subjects or causes to be subjected, any citizen of the United States, to deprive of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law.

Plaintiff seeks monetary damages and equitable relief. Plaintiff's need to be charged with 242.

COUNT 13

17 Plaintiff challenges the Defendants Newark Police Department, Joseph Dale Wren, Alameda  
18 County District Attorney. Plaintiff is challenging the State proceeding as invalid upon Plaintiff  
19 to explain or deny evidence against him and to be commanded upon the Court and by council  
20 and was considered by a jury, infringed upon the privileges against self incrimination under the  
21 Fifth Amendment. This Court should find the criminal trial case #209109 and all proceedings  
22 as invalid and clear Plaintiff's name from all police records, photos, state and federal criminal  
23 history reports. Adams v. California, 332 U.S. 46 (1947).

COUNT 14

26 The Plaintiff challenges the way Alameda County selects jurors to serve which is  
27 segregated by County and State employees who are currently working or retired. The  
28 relationship between the City(s) and County(s) and members of their unions are used to

1 pool potential jurors. This violates the Plaintiffs Six Amendment rights, which forbids the exclusion  
2 of groups on the basis of such characteristics as race or gender from a jury venire. The current  
3 requirement in Alameda County in selecting its jury list in this manner comes from the State of  
4 California's Article 1 ss26 of the State Constitution which allows segregation which denied the  
5 Plaintiff equal protection under the law. In this manner Alameda County draws up its jury list  
6 in such a manner that it produces a pool of prospective jurors disproportionately and thus more  
7 likely to yield petit jurors with similar dispositions. Plaintiff seeks to change the way the District  
8 Attorney and Alameda County violate citizen's rights. *Holland v. Illinois*, 493 U.S. (1990).

9 COUNT 15

10 Plaintiff challenges California law as to invalidate it by extending the rational of *Hunter v.*  
11 Erickson, were racial classifications were used. California and its Counties use its structuring  
12 political institutions and allocates power in its jury process according to "neutral principles".  
13 Plaintiff's constitutional rights have been violated through the Alameda County District Attorney.  
14 The claim is that the criminal proceedings of the Plaintiff under the current scheme of selecting  
15 jurors deprived the Plaintiff of due process of law, which the United States Constitution is  
16 entitled to him. The judicial judgment of this Court in applying the Due Process Clause to the  
17 current jury pooling system, must find the decision reached by those jurors is based upon  
18 idiosyncrasies of a personal bias allowed by the State of California, under ss26 of the California  
19 Constitution, known as Proposition 14.

20 The Court should invalidate the State law and policies that allow the County of Alameda and the  
21 District Attorney from drawing up jurors in this manner. *Holland v. Illinois*, 493, U.S. 1990.

22 COUNT 16

23 Robert Parker and Larry Upthegrove negligently impacted the Plaintiff causing him harm. They  
24 participated in an event in which they signed waivers of liability, if caused by their negligence  
25 they would be responsible for. They received compensation from Plaintiff home owners insurance  
26 policy to drop a counter claim against Plaintiff. Plaintiff seeks to recover in this claim money paid  
27 to Parker \$35,000 and Upthegrove \$15,000. They are negligent people.

28 *Constance J. Lopez*